



WILLIAM T FUJIOKA  
Chief Executive Officer

## County of Los Angeles CHIEF EXECUTIVE OFFICE

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December 18, 2007

Board of Supervisors  
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The Honorable Board of Supervisors  
County of Los Angeles  
383 Kenneth Hahn Hall of Administration  
500 West Temple Street  
Los Angeles, California 90012

Dear Supervisors:

### **RESOLUTION IMPLEMENTING SENATE BILL 134 ADDING SECTION 31663.15 TO THE CALIFORNIA GOVERNMENT CODE (3 VOTES)**

#### **IT IS RECOMMENDED THAT YOUR BOARD:**

Adopt the resolution to implement Senate Bill (SB) 134 which adds Section 31663.15 to the California Government Code. This bill allows the Sheriff's and Fire Department safety members (in Los Angeles County only) who are currently required to retire at age 60, to continue in employment if these provisions are adopted by a majority vote of the County Board of Supervisors. In addition, pursuant to Government Code Section 31680.9, this bill will allow Sheriff's Department retirees to be reinstated to active membership.

#### **PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION**

On October 5, 2007, the Governor signed into law SB 134 (Chapter 290, Statutes of 2007). This bill adds Section 31663.15 to the California Government Code addressing County employees' retirement.

Section 31663.15 allows the Sheriff's and Fire Department safety members to continue in active employment after age 60, if a County employed or County approved physician certifies that he or she is capable of performing their assigned duties pursuant to the standards set forth by the employer. In addition, it will allow sworn Sheriff's Department retirees to reinstate from retirement as

permitted by the County Board of Supervisors. These provisions only become operative if adopted by the County Board of Supervisors in a resolution.

The existing County Employees' Retirement Law generally requires Sheriff's and Fire Department safety members to retire at age 60. The County may, however, employ these safety members at age 60 and above, without reinstatement from retirement, in a position requiring special skills or knowledge for a maximum of 90 working days or 720 hours. The Board may also under the provisions of the retirement law extend that re-employment period, without reinstatement from retirement, up to 120 working days or 960 hours, whichever is greater.

The purpose of this recommended action is for your Board to provide the required approval, adopt the attached resolution and enact SB 134 in Los Angeles County. This resolution has been approved as to form by County Counsel.

#### **IMPLEMENTATION OF STRATEGIC PLAN GOALS**

This recommended action is consistent with the Countywide Strategic Plan Goal 3: Organizational Effectiveness by creating equitable and consistent policies for all safety members of the Sheriff and Fire Department; and Strategic Plan Goal 1: Service Excellence by allowing the Department to retain personnel with specific experience or expertise.

#### **FISCAL IMPACT/FINANCING**

There is no impact to net County cost.

#### **FACTS AND PROVISIONS/LEGAL REQUIREMENTS**

The current provisions related to mandatory retirement for safety employees were added to the County Employees Retirement Law in 1951. However, mandatory retirement provisions have been contained in the County Retirement Law from its first enactment in 1937. At that time, all members (both general and safety) were required to retire at the age of 70.

In 1967, the Federal Government enacted the Age Discrimination in Employment Act (ADEA). Claims were raised that the mandatory retirement laws were in conflict with the ADEA and therefore unenforceable.

In 1984, two (2) lawsuits were filed against the County of Los Angeles and the Los Angeles County Retirement Board (LACERA). Judgments were entered in 1985 prohibiting LACERA from mandating that life guards and investigators in the District Attorney's Office retire when they reached a specified age.

Effective January 1, 1987, amendments to the County of Employees Retirement Law made mandatory retirement optional, at the election of the County Board of Supervisors.

In December of 1986, the Los Angeles County Board of Supervisors, at the recommendation of Sheriff Sherman Block, and the County Fire Chief, John Englund, adopted a resolution to continue mandatory retirement for Sheriff's and Fire Department safety members in the County of Los Angeles.

During the same year, Congress incorporated a "public safety exemption" in the ADEA, which allowed State and local governments to enforce mandatory retirement provisions. The public safety exemption had a sunset provision of December 31, 1993.

On January 1, 1994, LACERA no longer enforced the mandatory retirement provision under the rationale that expiration of the "public safety exemption" placed the County's mandatory retirement laws in conflict with the ADEA, and under the supremacy clause of the U.S. Constitution, federal laws prevail over conflicting State law.

In September 30, 1996, HR 4278 reinstated the "public safety exemption" and included the following additional provisions:

- Mandatory retirement age cannot be lower than 55.
- Requires the National Institute for Occupational Safety and Health, an agency of the U.S. Department of Health and Human Resources, to conduct a study on fitness and to promulgate guidelines for job performance testing. Guidelines must be published and made effective by September 30, 2000.
- After September 30, 2000, any agency that wishes to enforce mandatory retirement provisions must administer annually a fitness test to each individual who has reached the age of mandatory retirement so that the individual may demonstrate his or her fitness to continue performing the duties of the position.

After the passage of HR 4278, LACERA, effective March 31, 1997, began enforcing the mandatory retirement provisions in the County Employees Retirement Law since they were no longer in conflict with the ADEA.

On March 4, 1997, the Board of Supervisors adopted a resolution terminating the application of the mandatory retirement provisions, but limited it to Sheriff's and Fire Department safety members employed after March 31, 1997. This limitation was due to a legal technicality. Under general rules of law, a County's action in adopting an optional code section cannot be rescinded unless there is legislation expressly authorizing such a reversal. Government Code Section 31483 authorizes a board of supervisors to adopt a resolution terminating the applicability of a previously adopted provision, but Section 31483 requires that such action apply to future employees only.

SB 134 authorizes the Board to exempt Sheriff's and Fire Department safety members from mandatory retirement. In addition, SB 134 provides that a Sheriff's Department safety member who was required to retire may be reinstated to active service providing a County employee or County-approved physician certifies that the safety member is capable of performing his or her assigned duties.

County Counsel is of the opinion that Government Code Section 31680.9(a)(2), however, specifically exempts fire suppression safety members from the reinstatement provisions of Section 31680.9. County Counsel further states that if the Legislature were to amend Section 31680.9 (and, if necessary, Section 31680.8) to permit reinstatement of retired fire suppression safety members, that amendment would be self-executing if the Board has previously adopted the implementing resolution for SB 134. It is our intent to sponsor legislation for that purpose and we have requested County Counsel develop the appropriate language.

#### **IMPACT ON CURRENT SERVICES**

The recommended action will allow the Sheriff's and Fire Department to retain personnel with specific expertise or experience and therefore maintain the level of services provided to the public.

#### **CONCLUSION**

It is, therefore, our recommendation that the Board adopt the attached resolution and create equitable and consistent policies for all safety members of the Los Angeles County Sheriff's and Fire Department.

The Honorable Board of Supervisors  
December 18, 2007  
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If you have any questions or require additional information, please contact Deputy Chief Executive Officer Doyle Campbell, Public Safety, at (213) 893-2374.

Respectfully,

A handwritten signature in black ink, appearing to read 'WTF', with a stylized flourish at the end.

WILLIAM T FUJIOKA  
Chief Executive Officer

WTF:SRH:RDC  
JW:SW:yjf

Attachment

c: Sheriff's Department

SB134.bl

**BOARD OF SUPERVISORS**  
**OF THE COUNTY OF LOS ANGELES**  
**RESOLUTION**

WHEREAS, effective January 1, 2008, Section 31663.15 of the Government Code (hereinafter "Section 31663.15") authorizes the Board of Supervisors of the County of Los Angeles upon approval by resolution, to exempt specified safety members from the requirement that such safety members retire at 60 years of age or 70 years of age if a physician employed or approved by the County certifies that the safety member is capable of performing his or her assigned duties; and,

WHEREAS, Section 31663.15 requires that the resolution adopted by the Board also make applicable to the County the provisions of Section 31680.8 of the Government Code (hereinafter "Section 31680.8") which permits a safety member who was required to retire for service because of age to be reemployed by the County in the same position that he or she retired from and be reinstated to active membership under specified conditions including the determination, based on medical advice, that the member is not incapacitated for the duties of the position assigned to him or her;

NOW THEREFORE, BE IT RESOLVED that Section 31663.15 and Section 31680.8 are hereby made applicable to the County of Los Angeles effective January 1, 2008.

The foregoing resolution was on the 18<sup>th</sup> day of December, 2007,  
adopted by the Board of Supervisors of the County of Los Angeles and ex officio the governing  
body of all other special assessment and taxing districts, agencies and authorities for which said  
Board so acts.




SACHI A. HAMAI, Executive Officer-  
Clerk of the Board of Supervisors  
of the County of Los Angeles

By:   
Deputy

APPROVED AS TO FORM  
BY COUNTY COUNSEL

RAYMOND G. FORTNER, JR.

By:   
HALVOR S. MELOM  
Principal Deputy County Counsel